

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1. STEPHEN JONES, Plaintiff,)	
)	
)	
vs.)	Case No. CIV-22-278-HE
)	
1. J. KEVIN STITT, Governor of Oklahoma;)	
2. PAUL ZIRIAX, Secretary of the)	
Oklahoma State Election Board,)	
)	
Defendants.)	

COMPLAINT

COMES NOW Plaintiff, Stephen Jones, and for his Complaint against Defendants J. Kevin Stitt, Governor of the State of Oklahoma, (“Governor”) and Paul Ziri ax, Secretary of the Oklahoma State Election Board, (“Ziri ax”) states as follows:

NATURE OF ACTION

1. This is an action, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202, seeking to redress the ongoing violation of the Seventeenth Amendment to the U.S. Constitution by Defendants prematurely calling a special election to replace the Honorable James M. Inhofe (“Senator Inhofe”) prior to Senator Inhofe vacating his senate seat. This action seeks to uphold Plaintiff’s rights under the Seventeenth Amendment and under the general principles of democracy upon which our nation rests to vote for and directly elect his U.S. Senator when a vacancy happens.

2. On February 25, 2022, Senator Inhofe submitted a letter dated February 28, 2022 to the Oklahoma Secretary of State Brian Bingman that contained an irrevocable

pledge to retire from the U.S. Senate effective January 3, 2023. A copy of the letter is attached hereto as Exhibit “1.”

3. On March 1, 2022, the Governor issued an Executive Department Executive Proclamation (the “Proclamation”) to the Oklahoma State Election Board and Secretaries of the County Election Boards ordering a Special Election be held to fill a vacancy in the office of U.S. Senator from Oklahoma, due to the retirement of Senator Inhofe. A copy of the Proclamation is attached hereto as Exhibit “2.”

4. The Proclamation orders that the Filing Period for the Special Election to replace Senator Inhofe shall be held April 13, 14, and 15, 2022; the Special Primary Election shall be held Tuesday, June 28, 2022; if required, a Special Runoff Primary Election shall be held Tuesday, August 23, 2022; and the Special General Election shall be held Tuesday, November 8, 2022.

5. Based on the Proclamation, Zirix issued a public document listing the offices that are on the ballot in 2022 and a “2022 State of Oklahoma Federal Candidate Filing Packet.” Senator Inhofe’s unexpired Senate office is included in both documents as an office on the ballot in 2022. A copy of these documents is attached hereto as Exhibits “3” and “4.”

6. Nevertheless, the Seventeenth Amendment to the U.S. Constitution and Oklahoma law do not permit a special election to replace a U.S. Senator until the Senator actually vacates his or her office.

PARTIES

7. The undersigned Plaintiff is a resident of the Western District of Oklahoma,

a citizen of Oklahoma, and a registered voter in Oklahoma. The undersigned brings this action to enforce his rights as a voter under the Seventeenth Amendment to participate in the direct election of his U.S. Senator when a vacancy happens. The undersigned also brings this action to enforce his right to seek a temporary appointment as U.S. Senator from Oklahoma when Senator Inhofe vacates his office.

8. The Governor is the Governor of the State of Oklahoma.

9. Ziriaux is Secretary of the Oklahoma State Election Board. Ziriaux is charged with effectuating the Governor's unlawful Proclamation. 26 O.S. §§ 2-107, 5-102 and 6-103.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) because this case seeks to remedy a deprivation of Plaintiff's rights under the Seventeenth Amendment to the U.S. Constitution.

11. Venue is proper in this judicial district because Defendants are residents of, and conduct business within its borders.

STANDING

12. Plaintiff is a registered voter in Oklahoma.

13. Plaintiff is also eligible to be appointed by the Governor to the office of U.S. Senator from Oklahoma that is currently scheduled to be vacated by Senator Inhofe effective on January 3, 2023. Specifically, Plaintiff is over the age of 30, has been a registered Republican voter in Oklahoma for at least the last five years and is willing to submit to the Oklahoma Secretary of State an oath affirming that he will not file as a candidate for the office when it next appears on the ballot. *See* U.S. Constitution, Article

I, section 3, clause 3; and 51 O.S. § 10(C).

14. Plaintiff was the Republican nominee for the U.S. Senate from Oklahoma in 1990.

15. Plaintiff formerly was employed by U.S. Senators as Special Assistant, and is the author of a biography on Senator W. Chapman Revercomb, in addition to being a member of the National Republican Senatorial Committee Trust. Plaintiff also served briefly as Republican State Chairman and as General Counsel of the Republican State Committee and represented numerous Republican office holders and candidates, including Governors, State Treasurers, Justices of the Supreme Court, State House members, State Senators, and members of the Oklahoma Corporation Commission.

16. Plaintiff has formally applied to the Governor to be temporarily appointed as U.S. Senator from Oklahoma when Senator Inhofe vacates his office, which is scheduled to occur on January 3, 2023. A copy of Plaintiff's March 31, 2022 Letter to the Governor is attached hereto as Exhibit "5."

17. Plaintiff has standing to bring this action because the Defendants are violating his right to vote under the Seventeenth Amendment when vacancies happen.

18. Plaintiff also has standing to bring this action because he has formally applied to the Governor to be temporarily appointed as a member of the U.S. Senate from Oklahoma when a vacancy happens in the office currently held by Senator Inhofe.

COUNT I— DECLARATORY RELIEF

19. Plaintiff realleges paragraphs 1 – 18.

20. The Seventeenth Amendment of the U.S. Constitution precludes the

Governor from calling a special election to replace Senator Inhofe prior to Senator Inhofe actually vacating his office. Here, the vacancy in Senator Inhofe's office is not scheduled to occur until January 3, 2023 at the earliest. Accordingly, the Governor's Proclamation violates the Seventeenth Amendment.

21. Further, Senator Inhofe still has the option to revoke or vacate his pledge to retire effective January 3, 2023. Article I, Section 5 of the U.S. Constitution makes the Senate "the sole judge of the qualifications of its members" and gives the Senate exclusive authority over expelling a member. *Burton v. United States*, 202 U.S. 344, 366, 26 S. Ct. 688, 693, 50 L. Ed. 1057 (1906). There is no known Senate rule or precedent that prohibits a Senator from withdrawing or revoking a letter of resignation/retirement (even one styled as irrevocable) prior to its effective date. Consequently, there is no present legal impediment to Senator Inhofe withdrawing or revoking his pledge to retire and remaining in office through the expiration of his term in January 2027. Therefore, it is clearly premature to have a special election in 2022 to replace Senator Inhofe when Senator Inhofe still has the present right to remain in office until the expiration of his term in January 2027.

22. Consistent with the Seventeenth Amendment, Oklahoma law also plainly and unambiguously requires the Special Primary, Runoff Primary and General Election to replace Senator Inhofe to take place in 2024. Specifically, "[w]hen a vacancy occurs in the office of a member of the U.S. Senate from Oklahoma, the Governor shall, **within thirty (30) days of occurrence of the vacancy...** [c]all a special election, if necessary, to fill such vacancy, as provided in Section 12-101 of Title 26 of the Oklahoma Statutes." 51 O.S. § 10(C) (emphasis added). Section 12-101(C)(1) of Title 26 of the Oklahoma Statutes

states: “A Special Primary, Runoff Primary and General Election shall be held concurrently with the next available regularly scheduled statewide Primary, Runoff Primary and General Election, and a special candidate filing period shall be on the same dates as the regular candidate filing period for those elections.”

23. Again, the vacancy in Senator Inhofe’s office is not scheduled to occur until January 3, 2023 at the earliest. The next regularly scheduled statewide Primary, Runoff Primary and General Election after January 3, 2023 is in 2024. 26 O.S. §§ 1-101 – 1-103. Therefore, the Governor’s Proclamation calling for the Special Election in 2022 to replace Senator Inhofe is clearly premature as a matter of law.

24. By virtue of the foregoing, the Defendants are violating Plaintiff’s right to vote in the direct election for his U.S. Senator under the Seventeenth Amendment to the U.S. Constitution by failing to issue a writ of election to fill Senator Inhofe’s office when the vacancy happens. Specifically, Defendants are holding a special election to replace Senator Inhofe prior to when a vacancy happens.

25. Additionally, Defendants’ actions have unconstitutionally deprived the Plaintiff of his opportunity to seek the temporary appointment when a vacancy happens in Senator Inhofe’s office, which is expected to occur on January 3, 2023.

26. Because the Defendants have prematurely called the special election to replace Senator Inhofe prior to the date when a vacancy happens in his office, an actual controversy exists between the parties.

WHEREFORE, Plaintiff respectfully requests this Court to declare, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201, that the special election called for in the Proclamation

violates the Plaintiff's right to: (a) vote in the direct election for his U.S. Senator under the Seventeenth Amendment to the U.S. Constitution when the vacancy happens; and (b) seek the temporary appointment to fill Senator Inhofe's office consistent with the Seventeenth Amendment to the U.S. Constitution and Oklahoma law when the vacancy happens in Senator Inhofe's office, which is expected to occur on January 3, 2023.

COUNT II— INJUNCTIVE RELIEF

27. Plaintiff realleges paragraphs 1 – 26.

WHEREFORE, Plaintiff respectfully requests this Court, pursuant to 28 U.S.C. § 2202 and 42 U.S.C. § 1983 to enter an order enjoining Defendants to: (a) not proceed with a special election in 2022 to replace the unvacated Senate seat held by Senator Inhofe; (b) issue a writ for a special election after Senator Inhofe actually vacates his office on or about January 3, 2023 and (c) temporarily appoint a replacement U.S. Senator until Senator Inhofe's office is filled by a special election held in conformity with the Seventeenth Amendment and Oklahoma law. Plaintiff also requests the Court award such other relief as the Court deems necessary or appropriate.

Respectfully submitted,

s/Stephen Jones

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